S.B.Cr.Misc. II Bail App. No. 5004/2007
(Mohan Lal Vs. State of Rajasthan)

Date of order : 22/11/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. J.S.Choudhary for the petitioner.

Mr. Ashok Upadhyay, Public Prosecutor.

Mr. Sandeep Mehta for the complainant.

By the instant second bail application under Section 439 Cr.P.C., petitioner Mohan Lal seeks bail in Sessions Case No. 169/07 arising out of FIR No. 111/07 Police Station- Mahila Thana, Jodhpur.

Heard learned counsel for the petitioner and the Public Prosecutor for the State as also counsel appearing for the first informant. Perused the order impugned and challan papers.

It is contended by learned counsel for the petitioner that at the time of dismissal of the first bail application, the matter was at the investigation stage, however, the petitioner was granted liberty to approach this Court after filing of the challan. Learned counsel submits that investigation has been concluded and challan has been filed. He has placed on record the challan

papers. I have perused the challan papers.

It is contended by learned counsel for the petitioner that similarly situated co-accused smt. Chandra has been granted bail under Section 439 Cr.P.C. and co-accused Kiran who is Nanad of the first informant has been released on bail under Section 438 Cr.P.C. and the case of the present petitioner is similarly situated to that of the case of Smt. Chandra who has been released on bail under Section 439 Cr.P.C. It is further contended by counsel for the petitioner that the first informant is daughter-in-law of the petitioner married to the petitioner's son Gajendra on 12.5.1998. The allegation as stated in the FIR as also in the statement of the first informant under Section 161 Cr.P.C. as also under Section 164 Cr.P.C. are that about five years ago i.e. somewhere in the year 2001, the business run by the petitioner went in losses and therefore, one “Tantrik” Gulam Mohd. was called for some “Tantrik Kriya” so that the business can come out of the losses and thereafter it was “Tantrik” Gulam Mohd. who did some Tantrik Kriya and pointed out that something is wrong with the first informant as she is suffering from the shadow of “Nagin” and in the garb of Tantrik Kriya, Tantrik Gulam Mohd. committed rape on her and since 2001 onwards Tantrik has continuously been committing rape on her. She stated that she is residing in the upper storey where the Tantrik

used to commit the rape while the petitioner who is father-in-law, mother-in-law and her husband used to sit in the ground floor and therefore, they had knowledge of such an act of the Tantrik. She further stated that about five years ago, she gave birth to a female child and went to her parents' house and informed the occurrence, however, there had been a Panchayat for that purpose and thereafter in the year 2006 her brother-in-law (Nandoi) Ram Kishore Birla financed some amount to the petitioner and her husband and he also thereafter used to commit the rape on her in the room at upper storey while the petitioner and her mother-in-law used to be at the ground floor. It is alleged that the said act of rape by Gulam Mohd. Tantrik as also by Ram Kishore Birla is with the consent of the present petitioner and other co-accused. It is contended by learned counsel for the petitioner that if the act of rape is continuing from 2001 by the Tantrik and thereafter from 2006 by Ramkishore Birla and if parents of first informant had knowledge then there was nothing to prevent them to report the matter promptly, however, the report has been lodged after 6-7 years. Learned counsel for the petitioner further submits that the petitioner is an old and infirm person of 62 years of age and if anything has happened it cannot be said that it was with his knowledge or connivance of the petitioner. The allegation as stated in the FIR that the Tantrik and Ramkishore Birla took

certain photographs and got certain papers signed, whereas neither such photographs have been placed on record nor the papers alleged to have been got signed by Tantrik and Ramkishore Birla and therefore, the petitioner is an innocent person. If anything has happened then it is with the consent of the first informant or might not have taken place as alleged by her. At any rate, according to learned counsel for the petitioner, there is no specific allegation against the present petitioner that while the alleged rape was committed he was present either in the room or outside the room in which the alleged rape was committed and therefore, according to learned counsel if anything has happened then it was the husband at best having some knowledge if something has happened but at any rate such an information would never reach to father-in-law, the petitioner herein an old person of aged about 62 years. Lastly, it is contended that if any offence as alleged by the first informant is made out then it would not traverse beyond Section 498 A IPC and the petitioner is in custody since 16.7.2007 almost for more than four months.

Learned public prosecutor and the counsel appearing for the first informant submit that over a period of five years, if the daughter-in-law is subjected to rape by Tantrik and brother-in-law of the first informant namely Ramkishore Birla, it cannot be

said that the petitioner being father-in-law had no knowledge and therefore, it has to be presumed that father-in-law had knowledge that his daughter-in-law is being subjected to forcible sexual intercourse by two persons namely Tantrik Gulam Mohd. and other Ramkishore Birla who is none but son-in-law of the petitioner. So far as the delay in lodging the report after about six years is concerned, it is contended that the prosecutrix have been bearing the atrocities and the manner in which she was subjected to sexual intercourse in the garb of Tantrik Kriya, but ultimately when it did not come to an end, she was left with no option but to report the matter. It is further contended that there had been a recording of conversation between Rajendra, Ramkishore, Gajendra and Dharmendra. Rajendra is cousin of the first informant, Ramkishore is co-accused and brother-in-law (Nandoi) against whom there is allegation of rape, Gajendra is husband of the first informant and Dharmendra is brother of the first informant.

I have carefully gone through the script of the conversation. So far as the present petitioner is concerned, nothing has been said about him, however, there are allegation against Gajendra husband of the first informant, Tantrik Gulam Mohd. as also Ramkishore Birla against whom there is serious allegation of committing rape on the first informant.

On careful perusal of the entire challan papers, in my view, the case of the present petitioner and the co-accused Chandra who has been released on bail by Co-ordinate Bench of this Court, is almost on similarly footing and there is no differentiation between these two. Even otherwise, according to the prosecutrix, if any rape has been committed in the room situated at upper storey where there is no allegation that the petitioner was present, however, it has been stated that the petitioner used to live at ground floor living in the same house where the occurrence took place for more than six years continuously, it cannot be presumed that it was the petitioner's connivance or consent. There being no other prima-facie evidence showing conspiracy for commission of rape. However, without commenting on the merit of the case which may prejudice the case of either of the party, having regard to the facts and circumstances of the case and the fact that similarly situated co-accused has been granted bail as also the fact that the petitioner is an old and infirm person of over 62 years of age, having considered the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439

Cr.P.C. is allowed and it is directed that petitioner Mohan Lal S/o Madan Lal be released on bail in CR No. 111/2007 P.S. Mahila Thana, Jodhpur provided he executes a personal bond for a sum of Rs. 20,000/- with two sound and solvent sureties in the sum of Rs. 10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR), J.

RP